

114TH CONGRESS  
2D SESSION

# S. 3180

To improve hiring and human resources flexibilities for Federal agencies in geographic areas affected by unique situations or circumstances, including remoteness, that cause recruitment and retention challenges, and to provide agencies experiencing such challenges with a toolkit of resources to overcome those challenges.

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## IN THE SENATE OF THE UNITED STATES

JULY 13, 2016

Ms. HEITKAMP introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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# A BILL

To improve hiring and human resources flexibilities for Federal agencies in geographic areas affected by unique situations or circumstances, including remoteness, that cause recruitment and retention challenges, and to provide agencies experiencing such challenges with a toolkit of resources to overcome those challenges.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Flexible Hiring and  
5       Improving Recruitment, Retention, and Education Act of  
6       2016” or the “Flexible HIRE Act”.

1   **SEC. 2. SENSE OF CONGRESS.**

2       It is the sense of Congress that—

3           (1) Federal agencies should take aggressive ac-  
4           tion to respond to hiring and retention challenges in  
5           geographic areas affected by a unique situation or  
6           circumstance, including when such challenges de-  
7           velop from a need to fill positions or retain employ-  
8           ees due to the remoteness of the geographic area in  
9           question;

10          (2) to respond to such challenges, Federal agen-  
11          cies should take advantage of all appropriate hiring  
12          and human resources flexibilities, including special  
13          pay rates and recruitment, relocation, and retention  
14          bonuses; and

15          (3) both the Office of Personnel Management  
16          and all Federal agencies have a significant responsi-  
17          bility to ensure that hiring and human resources  
18          flexibilities are as accessible as possible to Federal  
19          employees in geographic areas affected by a unique  
20          situation or circumstance.

21   **SEC. 3. COMPETITIVE SERVICE; EXAMINATIONS.**

22       Section 3304 of title 5, United States Code, is  
23       amended—

24           (1) in subsection (a)(3)(B), by striking “deter-  
25           mined that” and all that follows through the period  
26           and inserting the following: “determined that—

“(i) there exists a severe shortage of highly qualified candidates;

3                         “(ii) there is a critical hiring need; or  
4                         “(iii) the positions are in a geographic  
5                         area affected by a unique situation or cir-  
6                         cumstance that has directly and signifi-  
7                         cantly affected recruitment and retention  
8                         of employees in the area, in accordance  
9                         with subsection (g).”;

10 (2) by adding at the end the following:

11        "(g) RECRUITMENT AND RETENTION DIFFICULTIES  
12 IN GEOGRAPHIC AREAS AFFECTED BY UNIQUE SITUA-  
13 TIONS OR CIRCUMSTANCES.—

“(1) DEFINITION.—In this subsection, the term ‘geographic area affected by a unique situation or circumstance’ means an area within the continental United States in which the recruitment and retention of Federal employees has become a severe challenge for an agency as the direct result of a dramatic economic development, hardship, or other relevant situation, including remoteness, that has a substantial impact on the area.

“(2) DEMONSTRATION OF RECRUITMENT AND  
RETENTION DIFFICULTIES.—An agency may dem-  
onstrate that a geographic area is affected by a

1 unique situation or circumstance that has directly  
2 and significantly affected recruitment and retention  
3 of employees in the area by—

4 “(A) providing evidence—

5 “(i) that the agency is unable to effi-  
6 ciently and effectively recruit employees for  
7 positions, which may be demonstrated by  
8 various types of evidence, including evi-  
9 dence that multiple positions have been  
10 continuously vacant for significantly longer  
11 than the national average period for which  
12 similar positions in the Federal Govern-  
13 ment are vacant;

14 “(ii) that the agency experiences a  
15 consistent inability to retain employees  
16 that negatively impacts agency operations  
17 at a local or regional level;

18 “(iii) that the agency is unable to re-  
19 cruit and retain qualified candidates due to  
20 the remoteness of the geographic area,  
21 which remoteness may be demonstrated in  
22 the same manner as remoteness from the  
23 nearest local infrastructure is dem-  
24 onstrated under section 5942(b); or

1                         “(iv) of any other inability that the  
2                         Office determines sufficient; and  
3                         “(B) meeting any other criteria established  
4                         by the Office.

5                         “(3) PRIORITIZATION OF HIRING VETERANS.—  
6                         If an agency uses the direct hiring authority under  
7                         subsection (a)(3)(B)(iii), the agency shall work to  
8                         prioritize the hiring of veterans by following the  
9                         principles contained in part 307 of title 5, Code of  
10                         Federal Regulations, or any successor regulation, re-  
11                         garding the appointment of qualified veterans to the  
12                         competitive service.”.

13 **SEC. 4. SPECIAL PAY AUTHORITY.**

14                         Section 5305(b)(4) of title 5, United States Code, is  
15                         amended by striking “any other circumstances which” and  
16                         inserting “any other circumstances, including the location  
17                         of a position in a geographic area affected by a unique  
18                         situation or circumstance that has directly and signifi-  
19                         cantly affected recruitment and retention of employees in  
20                         the area (as described in section 3304(a)(3)(B)(iii)),  
21                         that”.

22 **SEC. 5. RECRUITMENT AND RELOCATION BONUSES.**

23                         Section 5753(b)(1) of title 5, United States Code, is  
24                         amended by striking “bonus” and inserting the following:  
25                         “bonus, including a position in a geographic area affected

1 by a unique situation or circumstance that has directly  
2 and significantly affected recruitment and retention of em-  
3 ployees in the area (as described in section  
4 3304(a)(3)(B)(iii))".

5 **SEC. 6. RETENTION BONUSES.**

6 Section 5754(b)(2) of title 5, United States Code, is  
7 amended—

8 (1) in subparagraph (A), by striking "or" at  
9 the end;

10 (2) in subparagraph (B), by striking the period  
11 at the end and inserting the following: " , including  
12 if the employee would be likely to leave for a similar  
13 position in the Federal service in a different duty lo-  
14 cation, or request and be granted a reassignment to  
15 a different duty location within the agency, because  
16 of the challenging circumstances of remaining in a  
17 position in a geographic area affected by a unique  
18 situation or circumstance that has directly and sig-  
19 nificantly affected recruitment and retention of em-  
20 ployees in the area (as described in section  
21 3304(a)(3)(B)(iii)); or"; and

22 (3) by adding at the end the following:

23 "(C) the Federal service or for a different  
24 position in the Federal Service because of the  
25 challenging circumstances of remaining in a po-

1 sition in a geographic area affected by a unique  
2 situation or circumstance that has directly and  
3 significantly affected recruitment and retention  
4 of employees in the area (as described in sec-  
5 tion 3304(a)(3)(B)(iii)).”.

6 **SEC. 7. ALLOWANCE BASED ON DUTY AT REMOTE WORK-**

7 **SITES.**

8 Section 5942 of title 5, United States Code, is  
9 amended—

10 (1) in subsection (a)—

11 (A) by striking “Notwithstanding” and in-  
12 serting the following: “COMMUTING FAC-  
13 TORS.—

14 “(1) IN GENERAL.—Notwithstanding”;

15 (B) in paragraph (1), as so designated, by  
16 striking “of not to exceed \$10 a day” and all  
17 that follows and inserting the following: “for  
18 the cost of the commute at a mileage reim-  
19 bursement rate prescribed by the Director of  
20 the Office of Personnel Management under  
21 paragraph (2)”;

22 (C) by adding at the end the following:

23 “(2) OPM REGULATIONS.—For purposes of  
24 paragraph (1), the Director of the Office of Per-  
25 sonnel Management shall prescribe by regulation a

1        mileage reimbursement rate that is equivalent, to  
2        the maximum extent practicable, to the mileage re-  
3        imbursement rate for privately owned automobiles  
4        prescribed by the Administrator of General Services  
5        under section 5707(b)(2).”; and

6                (2) by striking subsection (b) and inserting the  
7        following:

8        “(b) NON-COMMUTING FACTORS.—

9                “(1) IN GENERAL.—Notwithstanding section  
10      5536 of this title, an employee of an Executive de-  
11      partment or an independent establishment who is as-  
12      signed to duty, except temporary duty, at a site so  
13      remote from the nearest local infrastructure as to  
14      require an appreciable degree of expense, hardship,  
15      and inconvenience, beyond that normally encoun-  
16      tered in metropolitan life, on the part of the em-  
17      ployee, is entitled, in addition to pay otherwise due  
18      the employee, to an allowance in an amount not to  
19      exceed the necessary amount per day, as determined  
20      by the agency that employs the employee in accord-  
21      ance with paragraph (2) of this subsection.

22                “(2) DETERMINATION OF NECESSARY AMOUNT;  
23      OPM APPROVAL.—

24                “(A) DETERMINATION OF NECESSARY  
25      AMOUNT.—In determining the necessary

1           amount of an allowance under paragraph (1),  
2           an agency shall consider the factors considered  
3           by the Director of the Office of Personnel Man-  
4           agement under subpart B of part 591 of title  
5           5, Code of Federal Regulations.

6           “(B) OPM APPROVAL.—An agency may  
7           not pay an allowance under paragraph (1) un-  
8           less the Director of the Office of Personnel  
9           Management approves the amount of the allow-  
10          ance.

11          “(3) DEFINITION OF LOCAL INFRASTRUC-  
12          TURE.—For purposes of this subsection, the term  
13          ‘local infrastructure’ means—

14           “(A) established communities;

15           “(B) suitable places of residence, including  
16          sufficient affordable housing choices;

17           “(C) amenities and services, including  
18          medical care, child care and schools, and em-  
19          ployment options for spouses;

20           “(D) consumer goods and services; or

21           “(E) other local infrastructure as deter-  
22          mined by the Director of the Office of Per-  
23          sonnel Management.”.

1 **SEC. 8. OFFICE OF PERSONNEL MANAGEMENT AND OTHER**2 **AGENCY MANDATES.**

3 (a) IN GENERAL.—Subpart I of part III of title 5,  
4 United States Code, is amended by adding at the end the  
5 following:

6 **“CHAPTER 103—HIRING AND HUMAN  
7 RESOURCES FLEXIBILITIES**

“Sec.

“10301. Definitions.

“10302. Office of Personnel Management mandates.

“10302. Agency mandates.

8 **“§ 10301. Definitions**

9 “In this chapter—

10 “(1) the term ‘Chief Human Capital Officer’  
11 means—

12 “(A) the Chief Human Capital Officer of  
13 an agency designated or appointed under sec-  
14 tion 1401; or

15 “(B) the equivalent;

16 “(2) the term ‘Director’ means the Director of  
17 the Office;

18 “(3) the term ‘geographically related hiring and  
19 human resources flexibilities’ means hiring and  
20 human resources flexibilities that an agency is au-  
21 thorized to exercise with respect to a position in a  
22 geographic area affected by a unique situation or  
23 circumstance that directly and significantly affects

1       the ability of the agency to recruit and retain em-  
2       ployees, including under—

3               “(A) section 3304(a)(3)(B)(iii);  
4               “(B) section 5305;  
5               “(C) section 5753;  
6               “(D) section 5754;  
7               “(E) section 5942(b); and  
8               “(F) any other provision of law that the  
9       Director determines appropriate;

10      “(4) the term ‘hiring and human resources  
11     flexibilities’ means authority, relating to appoint-  
12     ments, compensation (including bonuses, allowances,  
13     and other types of compensation), leave, telework, or  
14     other incentives, that an agency is authorized to ex-  
15     ercise for a position with respect to which the agency  
16     has had difficulty recruiting and retaining employ-  
17     ees; and

18      “(5) the term ‘Office’ means the Office of Per-  
19     sonnel Management.

20 **“§ 10302. Office of Personnel Management mandates**

21      “(a) PERMANENT WORKING GROUP.—

22      “(1) ESTABLISHMENT.—The Director shall es-  
23     tablish a permanent hiring working group (referred  
24     to in this section as the ‘working group’) in the Of-  
25     fice to help agencies prepare and deal with geo-

1       graphic areas that are affected by a unique situation  
2       or circumstance, including remoteness, that directly  
3       and significantly affects the ability of the agencies to  
4       recruit and retain employees.

5               “(2) DUTY.—The working group shall continu-  
6       ously examine—

7                       “(A) hiring flexibilities;  
8                       “(B) worksite designations;  
9                       “(C) the application process;  
10                      “(D) specific pay flexibilities for hiring and  
11                      retention;

12                      “(E) workforce and succession planning;  
13                      and

14                      “(F) other issues related to recruitment  
15                      and retention.

16               “(3) CONSULTATION.—In carrying out its du-  
17       ties under this section, the working group shall con-  
18       sult with outsider stakeholder and Federal employee  
19       groups, as necessary.

20               “(b) EXERCISE OF GEOGRAPHICALLY RELATED HIR-  
21       ING AND HUMAN RESOURCES FLEXIBILITIES.—If the Di-  
22       rector determines that an agency is eligible to exercise geo-  
23       graphically related hiring and human resources flexibili-  
24       ties, the Director shall—

1               “(1) designate not less than 1 person from the  
2 working group to be the point person in the Office  
3 for each unique situation or circumstance to—

4               “(A) directly manage the challenges that  
5 the agency faces as a result of the unique situa-  
6 tion or circumstance in the applicable geo-  
7 graphic area;

8               “(B) develop strategies through which so-  
9 lutions developed for the agency can be shared  
10 with and utilized by other agencies that face po-  
11 tentially similar situations or circumstances;

12               “(C) guide the working group in address-  
13 ing the challenges in the applicable geographic  
14 area; and

15               “(D) provide leadership regarding indi-  
16 vidual roles for members of the working group;

17               “(2) provide guidance and recommendations to  
18 the agency regarding how to improve the hiring  
19 process, including through the USA Jobs Internet  
20 website, so that applicants for positions can be  
21 moved through the process as expeditiously as pos-  
22 sible to alleviate recruitment and retention problems  
23 as soon as possible; and

24               “(3) streamline the implementation of geo-  
25 graphically related human resources flexibilities so

1       that the recruitment, retention, and relocation ef-  
2       forts of the agency are as expeditious and effective  
3       as possible.

4       **“(c) STRATEGY FOR IMPROVING APPLICATION PROC-  
5       ESS FOR HIRING FLEXIBILITIES.—**

6       “(1) IN GENERAL.—Not later than 180 days  
7       after the date on which the Director establishes the  
8       working group, the working group shall submit to  
9       the Director a strategy that contains recommenda-  
10      tions on how to improve the application process for  
11      agency use of hiring and human resources flexibili-  
12      ties, including—

13           “(A) special pay rates;  
14           “(B) recruitment, retention, and relocation  
15           bonuses; and  
16           “(C) recruitment and hiring strategies.

17       “(2) STUDY.—In preparing the strategy under  
18       paragraph (1), the working group shall examine how  
19       to improve the ability of agencies to access the flexi-  
20       bilities described in that paragraph in a timely fash-  
21       ion to meet critical human resource challenges, in-  
22       cluding when a geographic area is affected by a situ-  
23       ation or circumstance that directly and significantly  
24       affects the ability of an agency to recruit and retain  
25       employees.

1                 “(3) RECOMMENDATIONS.—The working group  
2       may, as needed, develop recommendations for Con-  
3       gress regarding appropriate legislative changes, in-  
4       cluding changes to existing hiring and human re-  
5       sources flexibilities (including geographically related  
6       hiring and human resources flexibilities), needed to  
7       improve the ability of agencies to meet their hiring  
8       and retention needs.

9                 “(4) UPDATES TO STRATEGY.—

10                 “(A) IN GENERAL.—The working group  
11       shall update the strategy required under para-  
12       graph (1) and develop new recommendations if  
13       the Director determines that the strategy needs  
14       to be updated.

15                 “(B) CONSULTATION.—In determining  
16       whether the strategy required under paragraph  
17       (1) needs to be updated, the Director may con-  
18       sult with the heads of other agencies.

19                 “(d) EDUCATION.—The Director shall improve edu-  
20       cation regarding hiring and human resources flexibilities  
21       (including geographically related hiring and human re-  
22       sources flexibilities) for all agencies by—

23                 “(1) conducting not less than 1 annual training  
24       session for the Chief Human Capital Officer of each  
25       agency and employees of that officer; and

1           “(2) in coordination with the Chief Human  
2 Capital Officers Council, developing training and  
3 educational materials on Government-wide hiring  
4 and human resources flexibilities for employees of  
5 each agency who are involved in recruitment, hiring,  
6 assessment, or selection of candidates.

7       “(e) EVALUATION.—

8           “(1) IN GENERAL.—The Director shall evalu-  
9 ate, on an annual basis, the extent to which training  
10 conducted directly by the Office and by agencies has  
11 improved the hiring and retention ability of agencies  
12 that face unique situations or circumstances that im-  
13 pact hiring and retention.

14          “(2) INFORMATION.—The evaluation conducted  
15 under paragraph (1) shall include—

16           “(A) any reduction in the time taken by  
17 agencies to fill mission-critical positions in geo-  
18 graphic areas facing unique situations or cir-  
19 cumstances;

20           “(B) the quality of new hires, including the  
21 satisfaction of hiring managers with new hires,  
22 within 1 year of filling a position; and

23           “(C) other information the Director deter-  
24 mines relevant.

1   **“§ 10303. Agency mandates**

2       “(a) IN GENERAL.—If a geographic area is affected  
3 by a unique situation or circumstance that directly affects  
4 the ability of an agency to recruit and retain employees,  
5 including situations or circumstances where the remote lo-  
6 cation of a position significantly impacts the ability of an  
7 agency to recruit or retain employees, the agency shall—

8           “(1) take action to mitigate the challenge in a  
9 timely fashion, including by creating pilot programs  
10 or other programs, if appropriate, to increase the  
11 number of new employees who are placed in that ge-  
12 graphic area;

13           “(2) not later than 180 days after the date on  
14 which the Director determines that the agency is eli-  
15 gible to exercise geographically related human re-  
16 sources flexibilities, implement any pilot program  
17 created under paragraph (1);

18           “(3) examine existing agency programs to de-  
19 termine how to—

20              “(A) most effectively aide spouses and  
21 families of affected agency employees; and

22              “(B) develop a strategy to aide those  
23 spouses and families; and

24           “(4) enhance targeted recruiting efforts by  
25 building relationships with local colleges and univer-

1       sities, veterans transition and employment centers,  
2       and job placement programs in the area.

3       “(b) EDUCATION.—An agency shall conduct annual  
4 training sessions for employees of the agency on hiring  
5 and human resources flexibilities (including geographically  
6 related hiring and human resources flexibilities), of which  
7 the Chief Human Capital Officer of the agency or a des-  
8 ignee shall conduct not less than 2 training sessions for  
9 each employee of the agency serving in agency head-  
10 quarters or field offices involved in the recruitment, hiring,  
11 assessment, or selection of candidates.”.

12       (b) TECHNICAL AND CONFORMING AMENDMENT.—  
13 The table of chapters for part III of title 5, United States  
14 Code, is amended by inserting after the item relating to  
15 chapter 102 the following:

“**103. Human resources flexibilities .....10301”.**

**16 SEC. 9. CENTRALIZED INTERNSHIP DATABASE.**

17       Section 3111a of title 5, United States Code, is  
18 amended—

19           (1) by redesignating subsection (c) as sub-  
20 section (d); and

21           (2) by inserting after subsection (b) the fol-  
22 lowing:

23       “(c) CENTRALIZED DATABASE.—The Office of Per-  
24 sonnel Management shall establish and maintain a cen-

1 tralized electronic database that contains the names, con-  
2 tact information, and relevant skills of individuals who—  
3           “(1) have completed or are nearing completion  
4           of an internship program; and  
5           “(2) are seeking full-time Federal employ-  
6           ment.”.

○